



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/623,013	08/24/2000	Filip Arnaut	VANM172.001A	5701

20995 7590 04/23/2002

KNOBBE MARTENS OLSON & BEAR LLP
620 NEWPORT CENTER DRIVE
SIXTEENTH FLOOR
NEWPORT BEACH, CA 92660

EXAMINER

HENDRICKS, KEITH D

ART UNIT	PAPER NUMBER
----------	--------------

1761

DATE MAILED: 04/23/2002

//

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/623,013

Applicant(s)

ARNAUT ET AL.

Examiner

Keith Hendricks

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2001.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 13 and 21 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Pages 1 and 5 of the specification provide a teaching where "the improver according to the invention can further comprise one or more ingredients selected from the group consisting of emulsifiers, fats, enzymes, ...". While a certain subset of fats may act as emulsifiers in certain environments, the specification does not support the limitation of this subset range, namely "said fat being an emulsifier", in claims 13 and 21.

Cancellation of the new matter in response to this Office action is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Due to the amendment of claim 13, dependent claims 14-19 are indefinite for the recitation of "the improver of claim 13". Claim 13 is currently directed to "a composition for preparing bread."

Claims 18-19 are indefinite, as the limitations therein are unclear as to whether they apply solely to the particles themselves, to the "powder comprising agglomerated particles", or to the entire composition. Note that claim 13 requires flour in the composition, whether it is a component of the particles, or simply present in the composition (Claim 13 appears to state that the flour is part of the

Art Unit: 1761

composition, but that the powder comprises only the particles, not the flour. However, this is not absolutely clear. This may be clarified by the use of (a), (b), (c), etc. to indicate each set of components within the claim.). It is further unclear as to how this specific component relates to claims 18-19, especially claim 19 which recites various types of flour.

It is further noted that claim 17 includes the addition of emulsifiers. It is unclear if an additional and distinct emulsifier is to be added to the composition, or simply, if more of the same emulsifier already present in claim 13 is to be added.

Claims 13 and 20-21 are indefinite for the recitation of the phrase "prepared from fat and enzymes". The claims do not require that fat and enzymes be present in the composition; however, the metes and bounds of the phrase "prepared from" are unclear, as to how this limits the claimed *composition*. The necessity of the phrase is unclear, as well as the intended difference of applicants' amendment from "particles of fat and enzymes". It is unclear as to what is contained in the particles, and -- if they do indeed contain fat and enzymes -- if the particles may comprise other elements. Note that claim 21 does not further limit the particle composition produced; it simply states that "the starting materials" from which the particles are "prepared", comprise enzymes and fat.

Claims 14 and 17 are indefinite for the recitation of the phrase "wherein the particles further comprise" the listed ingredient(s). As stated above, it is unclear as to what the particles initially "comprise", and thus it is unclear as to how they may "further comprise" additional elements.

Claim 20 is indefinite for the recitation of the phrase "forming particles...". The composition of said particles is unclear, as to whether these are the same particles "prepared" above, and if so, what steps are performed in order to form "particles having a mean particle size greater than 250 μm ." Thus, it is also unclear if there are two sets of particles, each with specific size limitations. The step of "mixing said particles" does not serve to clarify this issue.

* NOTE: While it is appreciated that applicants' representative "has endeavored to address all of the Examiner's concerns as expressed in the outstanding Office action" (pg. 5, response), applicants' representative is encouraged to review and amend the claims as a whole, to best fit applicants' invention, and not simply amend the claims to avoid certain rejections. This consideration can serve to eliminate new rejections, such as those found above.

Art Unit: 1761

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Kringelum (WO 98/38869).

Kringelum discloses the production of a food improving composition, in particular, a pre-mix bread-improving composition, which comprises two components which are coated/encapsulated by a fatty substance. The components may be baking powder, gelling agents, or enzymes (abstract, pg. 4, line 20). Page 8 of the reference states that "several of the above fatty substances have emulsifying activities."

At page 5, it is stated that the starting particles comprising fats and the component (for example as stated, enzymes), may be further subjected to subsequent encapsulation treatments, increasing the size of the particles. "The further encapsulating substance may be a hydrocolloid, a polymer or a fatty substance" (pg. 6). "It is also possible to have conventional food additives incorporated into the composition", "either incorporated into the encapsulating substance... or added to the composition as separate non-encapsulated components" (pg. 6). Further, other substances may be used as secondary encapsulating substances, including protein hydrocolloids (pg. 8-9). Page 10 states that "the thickness or the amount of the encapsulating substance may be varied." Page 11 states that the composition may be in the form of a liquid, viscous paste, or in "particularly preferred embodiments the composition is a powder", wherein the particles "preferably have an average largest diameter which is in the range of 50 μm to 1000 μm such as a range of 100 to 500 μm ." While the reference suggests a "liquid pre-mix for preparing a bakery product" at page 12, it is stated that "the composition may be provided as a dry or pourable aqueous pre-mix for a particular type of food system." The pre-mix for preparing a bakery product may contain in addition to the encapsulated particle components, "conventional bakery ingredients such as sugar, egg, water binding agents, fat, emulsifiers... or flour." The reference specifically provides for heating the composition in a food system, especially "a dough or batter mixture during baking" (pg. 12, line 30-34, etc.).

The process may be carried out wherein "the encapsulating substance is in a liquid or dissolved state", and wherein the "particles are brought into a fluidized state and the encapsulating substance is applied onto the fluidized particles" (pg. 12).

Thus, the claimed invention is anticipated by Kringelum.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kringelum, as applied to claims 13-19 above, and further in view of Green et al., taken as cited previously on the record.

Kringelum is taken as cited above. Kringelum does suggest the use of dissolved aqueous solutions providing the particles "in a fluidized state", but does not specifically teach the specific protocol steps utilized to produce the particles of the composition.

Green et al. disclosed a process for producing enzyme granules by encapsulating with fats, wherein the granules are made by spraying the enzyme-containing core with an atomized aqueous solution. The use of a fluidized bed reactor was exemplified in the production of these encapsulates, including times, temperatures and resultant particle sizes within the instantly-claimed ranges, as cited previously on the record.

Thus, it would have been obvious to one of ordinary skill in the art to have utilized a known method in the art, i.e. that of Green et al., to produce the encapsulate particles disclosed by Kringelum. Kringelum specifically states that the particles are coated "in a fluidized state", and thus one of ordinary skill in the art would have relied upon a known process wherein the same or similar particles were produced, in order to carry out the teachings of the primary reference. As stated in the rejection under 35 USC 102, previously of record, Green et al. taught the same encapsulated particles as those used in the invention, and thus motivation and an expectation of success may be found therein, as well. The use of the resultant particles within a composition for preparing bread, such as a dough containing flour, was specifically taught by Kringelum et al., and thus would not have involved an inventive step in the art.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (703) 308-2959.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached at (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3602.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


KEITH HENDRICKS
PRIMARY EXAMINER